IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1397 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMBUBHAI NARANJI GOJA

Versus

DISTRICT MAGISTRATE SURAT

Appearance:

1. Special Civil Application No. 1397 of 2005

MR HR PRAJAPATI for Petitioner No. 1

MR IM PANDYA, AGP for Respondents No. 1-3

M IA SHAIKH for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 17/03/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by the District Magistrate, Surat on 25th January, 2005 in exercise of powers conferred upon him vide Sub-Section (2)(a) of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (PBM Act for short). The petitioner is under detention in pursuance of the said order from 25th January, 2005.

2. The grounds of detention as placed on record reveal the factual background that the one Shri Kaushalbhai Rameshbhai Desai was a dealer of oil companies and was granted a license according to rules for distribution of blue kerosene to the fair price shops of specified area of Surat District. The blue kerosene is an essential commodity under the control orders framed by the State Government by virtue of the Essential Commodities Act, 1955 and the blue kerosene is subsidized by the State Government for distribution for the same amongst lower or middle income commune citizens who hold ration cards, as per the rules framed by the State Government. According to the distribution system, the agent of the oil companies who is licensed by the State Government, receives bulk of such blue kerosene from oil companies and distributes to the fair price shop-owners who are licence holders to distribute in turn, such blue kerosene to the ration card holders. The difference between white and blue kerosene is made because white kerosene is available in open market with higher rates, while blue kerosene being an essential commodity is for distribution to lower or middle income commune citizens by the fair price shop owners through ration cards by subsidized rates.

3. On 4th January, 2005, the above referred Kaushalbhai Rameshbhai Desai through one oil tanker No.GT-G-3119 lifted 12000 liters of blue kerosene for distribution to [1] Mohanlal B. Jain at Mahuva, 4000 liters, [2] Kharvan Co-operative Society, 2000 liters [3] Vinodbhai K. Patel, Bartad, 3000 liters and [4] Shankarlal Nagjibhai Jain, Shaikhpur, 3000 liters. The above agent Kaushalbhai Rameshbhai Desai being license holder submitted a programme for distribution of 12000 liters of kerosene to above four persons which was approved by the State Government. The tanker in which such quantity was carried belonging to one Smt.Surekhaben which was hired by the petitioner and the driver of such tanker was one Shri Ghanshyambhai Agrawal and his assistant cleaner was one Shri Pappu Franses Koli.

4. The District Supplies Department of Surat received information on 4th January, 2005 that the

Kaushalbhai Rameshbhai Desai instead of distribution programme approved was to transport the said bulk of blue kerosene to the present petitioner having a fair price shop and license holder to distribute such kerosene to ration card holders at subsidized rates. A team of Supply Department, Surat District kept surveillance around the shop of the present petitioner at Salabatpura, Surat and raided his shop. On shop being raided by the team of the District Supplies Officers of Surat District, they found that the tanker No.GT-G-3119 unloaded 12000 liters of blue kerosene at the shop of the present petitioner. The tanker was loaded and sent and was transporting the bulk as per the instructions of the Kaushalbhai Rameshbhai Desai. The Supply Officers recorded the statements of tanker driver Ghanshyambhai Agrawal. He stated that the bulk of 12000 liters of blue kerosene was unloaded at the shop of present petitioner instead of above mentioned four persons at the instructions of the above Kaushalbhai Rameshbhai Desai, while cleaner Pappu Franses Koli also offered his statement in support of driver Ghanshyambhai Agrawal. A panchnama was drawn and said bulk of 12000 liters of kerosene was seized by the team of Supply Department of Surat District. As per the allegations, this 12000 liters of kerosene which was obtained at subsidized rate was to be sold by the present petitioner and above said Kaushalbhai Rameshbhai Desai in open market with higher rates in collusion. Such black marketing was to yield huge amount of personal gain to the present petitioner and Shri Kaushalbhai Rameshbhai Desai. The authority also came to the conclusion that driver Shri Ghanshyambhai Agrawal also was an accomplice along with the present petitioner and above referred Kaushalbhai Rameshbhai Desai in this black marketing and he was also to receive financial gain. According to the statements of the driver Shri Ghanshyambhai Agrawal, the four above mentioned persons to whom according to control orders, the above referred Kaushalbhai Rameshbhai Desai was bound to make delivery of blue kerosene, were also to receive financial gain through this scandal of black marketing of blue kerosene in open market. The District Supplies Officer, Surat launched proper inquiry and recorded statements of the owner of the tanker and she stated that she had given the said tanker on hire to the above referred Kaushalbhai Rameshbhai Desai and liability of salary to the driver was on him. The statements of other persons to whom actually delivery of the blue kerosene was to be made by the above referred Kaushalbhai Rameshbhai Desai were also recorded but they denied to have participated in any manner in the said scandal as stated by driver Shri Ghanshyambhai Agrawal. The

statement of the abovesaid Kaushalbhai Rameshbhai Desai cannot not be recorded by the department because he did not made himself available for the statement. The statement of the present petitioner was also recorded in which he accepted the allegations.

5. From the above facts, the authority concerned reached to the conclusion that at the instruction and under the management of the abovesaid Kaushalbhai Rameshbhai Desai, tanker driver Shri Ghanshyambhai Agrawal in collusion with the present petitioner with an intention to gain financially illegally, were engaged in activities of selling blue kerosene in open market at higher rates. The detaining authority also reached to the subjective satisfaction that keeping in view huge financial gain, present petitioner, above referred Kaushalbhai Rameshbhai Desai and the driver in collusion were engaged in the activities which were prejudicial to the maintenance of supplies of commodities essential to the community. It was also alleged that the present petitioner as well as other two acted in breach of the provisions of Essential Commodities Act, 1955 and Control Orders framed in 1993 by virtue of the Essential Commodities Act 1955. The detaining authority also reached to the subjective satisfaction that the illegal activities of the petitioner, which were prejudicial to the maintenance of supplies of commodities essential to the community were required to be prevented forthwith. Though a criminal complaint against all the three persons came to be filed by the department before Salabatpura Police Station, Surat for the preach of Sections 3 and 7 of the Essential Commodities Act, 1955 and though the licence issued to the present petitioner and above said Kaushalbhai Rameshbhai Desai were suspended for 90 days, the detaining authority reached to the subjective satisfaction that to prevent the activities of the present petitioner and others, these actions were not sufficient. The detaining authority, therefore, passed an order of detention of the petitioner under the PBM Act, which is under challenged in this petition.

6. Learned advocate Mr.H.R.Prajapati for the petitioner, learned AGP Mr.I.M.Pandya for the respondents No.1, 2 and 3 and learned Standing Counsel Mr.M.I.A. Shaikh for the respondent No.4 were heard at length. The affidavit-in-reply as filed by Mr.A.K.Ganguli, under Secretary in the department of Consumer Affairs Food and Public Distribution, New Delhi, affidavit-in-reply filed by Mr.H.C.Kadia, Deputy Secretary to the Government, Food and Civil Supplies and Consumer Affairs Department and affidavit-in-reply filed by the detaining authority, all

the three affidavit-in-replies were taken into consideration.

7. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by the learned AGP and learned Standing Counsel for the Central Government, it appears that this petition can be examined, discussed and disposed of on the sole issue as to whether the right of the petitioner as enshrined by Article 22(5) of the Constitution of India is breached.

8. On going through the papers served upon the detenu with the grounds of detention, it clearly appears that the certain documents are illegible, page Nos.131, 133, 135 are the copies of the registration book of oil tanker involved in the incident, but the same is ex-facie illegible. Likewise, some other documents i.e. orders of this Court passed in Special Civil Application No.13089 of 2004 placed at page No.233 of this compilation is also illegible, especially paragraph No.7 at page No.243 is ex-facie illegible, while again a petition filed by co-detenu in this Court at pre-detention stage is relied upon by the detaining authority and copy is served to the present petitioner is also illegible which is placed at page Nos.265 and 271 of the compilation of the petition. Again a copy of one order passed by this Court in Special Civil Application No.13089 of 2004 placed at page No.319 especially paragraph No.7 of the said copy is illegible. Therefore, there is no manner of doubt that the papers relied upon by the detaining authority and served upon the present petitioner contains illegible documents.

9. The facts of the present case, therefore, is squarely covered by a decision of the Division Bench of this Court in the matter of P.S. CHANDEL vs. DISTRICT MAGISTRATE, as reported in 1991 (2) GLR 753. In this connection, this Court observed in para 3 and 4 as under:-

> "3. Learned Advocate for the petitioner submitted that it is imperative that the detaining authority must serve the grounds of detention which include also all the relevant documents which had been considered in forming the subjective satisfaction by the detaining authority before making the order of detention. He submitted that the detenu was given the list of documents accompanying the grounds of detention on which the detaining authority relied

upon for making the impugned order as stated in the ground of detention to enable the detenu to make an effective representation to the Advisory Board as well as to the detaining as mentioned in the ground of detention, but the detaining authority failed to supply legible copy of the relevant document to the detenu which is given at page 195 of the compilation, which affected the detenu's important right of making an effective representation under Art.22(5) of the Constitution of India and, therefore, the order of detention is required to be quashed and set aside. He showed a xerox copy of the document supplied at page 195 of the compilation. On perusing the document, it appears that the document at page 195 is the receipt issued by 'Gujarat Rajya Nagarik Purvatha Nigam Ltd', which is a vital document on which reliance is placed by the detaining authority. Looking to the document, it appears that it is illegible and the name of the prayer on which the rubber stamp is applied and the contents of the said rubber stamp are not legible. Mr. Tripathi appearing on behalf of the detaining authority drew our attention to the affidavit filed on the aforesaid point, which is set out at para 12 of the affidavit-in-reply, the relevant part of which reads as under :

" I submit that the petitioner has been supplied with the entire material relied upon by the detaining authority for the purpose of passing the detention order ..... In fact, the entire material has been given in order to enable the detenu to make effective representation. It is also absolutely wrong to say that some of the pages are not legible at all, viz. pages Nos. 145, 147, 155, 185 and all the receipts of Weigh Bridge, etc since mere look at the copies supplied to the petitioner - detenu makes it clear that they are absolutely legible....."

The document at page 195 was shown to Mr. Tripathi and he fairly admitted that the said document is not legible."

"4. In view of the above position, we are of the opinion that the detaining authority failed to supply legible copy of the said relevant document to the detenu for making an effective representation which has infringed the detenu's

right under Art.22(5) of the Constitution. We are supported by the judgment of the Supreme Court in the case of Smt. Dharmista Bhagat v. State of Karnataka & Anr., reported in 1989 Supp. (2) SCC 155."

10. These documents were complained of by the petitioner in representation as well as the petitioner has taken this contention in the present petition. It is also replied by the detaining authority in affidavit-in-reply, but the facts remained that some vital documents were illegible among the papers served upon the detenu on which the detaining authority relied upon. In view of this position, it is clear that the detaining authority failed to supply legible copies of the said relevant documents to the detenu for making effective representation which adversely affected the right of detenu as enshrined under Article 22(5) of the Constitution of India. The order under challenged, therefore, is required to be quashed and set aside on this ground alone.

11. In the result, the petition is allowed. The order passed by the District Magistrate, Surat on 25th January, 2005, against the petitioner in exercise of powers under Sub Section (2)(a) of Section 3 of the PBM Act is hereby quashed and set aside. The detenu AMBUBHAI NARANJI GOJA is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

(vijay)